



COUNTY OF ERIE

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April 12, 2011

Shawn P. Martin, Esq.
Erie County Legislature
Advisory Committee on Reapportionment
Old County Hall
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Questions Pertaining to Reapportionment

Dear Mr. Martin:

I am in receipt of your correspondence dated April 6, 2011 requesting an opinion as to:

- (1) whether persons incarcerated in facilities within the County are counted as a resident of the facility or as a resident of the address at which they resided prior to incarceration; and
- (2) whether students residing in the County, at residence halls or other rental locations, are counted as residents of the County or of the place at which they resided prior to coming to the County for their education.

Executive Summary

Inmates of New York State correctional facilities are residents of the address at which they resided prior to incarceration. Any other class of transient person may be excluded as long as relevant factors are investigated and the decision is well supported. Consequently, students and persons incarcerated at the Erie County Holding Center and the Erie County Correctional Facility are not necessarily excluded from an apportionment base, but the County Legislature may so exclude them.

Discussion

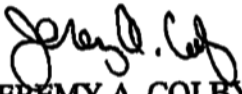
The overarching principle relative to apportionment is "One Man, One Vote." *Reynolds v. Sims*, 377 U.S. 533 (1964). Apportionment involves different standards than those applicable to an individual's right to vote. *Longway v. Jefferson Co. Board of Supervisors*, 83 N.Y.2d 17 (1993). A local legislature is not required to apply the same standards for apportionment as those used for voting purposes because it is appropriate for "residence in the apportionment sense [to] be construed more broadly than in terms of voting rights" *Longway*, 83 N.Y.2d at 25.

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Correction Law §2(4)(a) defines "correctional facility" as any place that is operated by the Department of Correctional Services for persons being confined under a sentence of imprisonment. That section also states that the term "state prison" is synonymous with "correctional facility." Correction Law §2(16)(a) also defines "local correctional facility," also referred to as a jail or penitentiary, as any place operated by a county for the confinement of various persons. Moreover, Article 20 of the Correction Law pertains to the operation of "local correctional facilities" and it specifically references the Erie County Holding Center and Erie County Correctional Facility. See Correction Law §500-a(2-b). If the State Legislature had intended to include a "local correctional facility" in the amended language of the Home Rule Law, it would have expressly done so. See Correction Law §40(3).

Home Rule Law states that a residence cannot be gained or lost due to incarceration in a New York State facility. Therefore, incarcerated persons in New York State facilities are counted as a resident of the address at which they resided prior to incarceration. Persons confined to county operated correctional facilities, however, can be excluded from the apportionment base in accordance with *Longway*.

Very truly yours,


JEREMY A. COLBY
Erie County Attorney

JAC/dkw